

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER GRANTING IN PART
and DENYING IN PART
BRISTOL-MYERS SQUIBB COM-
PANY'S MOTION FOR DIS-
MISSAL

This document relates to:

Payne v. Bayer Corp., C05-1032

This matter comes before the court on a motion for dismissal by defendant Bristol-Myers Squibb Company ("BMS"). BMS seeks dismissal of plaintiff Linda Payne's putative claims for negligence, fraud, misrepresentation, conspiracy under articles 2315-2317 of the Louisiana Civil Code, and her claims for breach of warranty against redhibitory defects, arguing that the Louisiana Product Liability Act is the exclusive theory of recovery available to plaintiff. BMS also asks the court to dismiss plaintiff's punitive damages claims, which defendant argues are not recognized under Louisiana law.

Plaintiff concedes that Louisiana law prevents recovery on redhibition claims for non-economic losses, and relinquishes her punitive damages claims, if any. Plaintiff concedes that the LPLA

1 preempts common law claims, but argues that references in her
2 complaint to conspiracy, fraud, negligence, strict liability are
3 not claims for such, but elements of her LPLA claim. Finally,
4 plaintiff's response to defendant's motion to dismiss any claims
5 under articles 2315-2317 of the Louisiana Civil Code is that her
6 complaint "clearly indicates that Plaintiff is basing her theo-
7 ries of recovery on Louisiana statutory law." Response at 6.
8 Defendant did not file a reply.

9 The parties therefore agree that non-LPLA claims such as
10 negligence, conspiracy, misrepresentation, fraud, etc. are
11 disallowed under Louisiana law. The court finds that "dismissal"
12 of these "claims" is not appropriate, however, as such theories
13 enumerated in the complaint are set forth as elements of plain-
14 tiff's LPLA claims, and not independent claims per se. Plaintiff
15 does appear to be making claims based on Louisiana Civil Code
16 articles 2315-2317, however, where she asserts in her complaint
17 that "Defendants are liable unto Complainant pursuant to Louisi-
18 ana Civil Code Articles 2315-1217." Her response - that she is
19 making a claim pursuant to Louisiana statutory law - does not
20 refute defendant's argument that these claims are incompatible
21 with the LPLA. Any such claims are therefore dismissed.

22 The parties also appear to agree that non-economic
23 redhibitory claims and punitive damages are disallowed under
24 Louisiana law; any such claims in the complaint are hereby
25 dismissed.

26 Defendant's motion is therefore granted in part and denied

1 in part as outlined above.

2 DATED at Seattle, Washington this 23rd day of August,
3 2005.

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5 BARBARA JACOBS ROTHSTEIN
6 UNITED STATES DISTRICT JUDGE
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